

**COMBINED TRANSMITTAL OF APPEAL BRIEF TO THE BOARD OF PATENT
APPEALS AND INTERFERENCES & PETITION FOR EXTENSION OF TIME
UNDER 37 C.F.R. 1.136(a) (Large Entity)**

Docket No.
3753

In Re Application Of: **CLAUSS, S., ET AL**

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
10/590,257	08/22/2006	SAHLE, M.	278	2873	6037

Invention: **OPTICAL MARKING DEVIC E**

COMMISSIONER FOR PATENTS:

This is a combined Transmittal of Appeal Brief to the Board of Patent Appeals and Interferences and petition under the provisions of 37 CFR 1.136(a) to extend the period for filing an Appeal Brief.

Applicant(s) hereby request(s) an extension of time of (check desired time period):

☒ One month ☐ Two months ☐ Three months ☐ Four months ☐ Five months

from: **FEBRUARY 3, 2009** until: **MARCH 3, 2009**
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Invention: **OPTICAL MARKING DEVIC E**

TO THE COMMISSIONER FOR PATENTS:

This combined Transmittal of Appeal Brief to the Board of Patent Appeals and Interferences and petition for extension of time under 37 CFR 1.136(a) is respectfully submitted by the undersigned:

/MICHAEL J. STRIKER/

Signature

Dated: **02/27/2009**

MICHAEL J. STRIKER

REG. NO.: 27233

ATTORNEY FOR THE APPLICANT

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Examiner: Sahle, M.

Art Unit: 2873

Docket No. 3753

In re:

Applicant: CLAUSS, S., et al

Serial No.: 10/590,257

Filed: August 22, 2006

APPEAL BRIEF

February 26, 2009

Hon. Commissioner of
Patents and Trademarks
Washington, D.C. 20231

Sirs:

The Appellants submit the following for their brief on appeal and respectfully request consideration of same. The Appellants request withdrawal of the rejections made and that the Application be placed in line for Allowance.

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I. REAL PARTY IN INTEREST

The real party in interest in the instant application is the assignee of the application, Robert Bosch GmbH, Stuttgart, Germany.

II. RELATED APPEALS AND INTERFERENCES

The Appellants are unaware of any related appeals or interferences with regard to the application.

III. STATUS OF CLAIMS

Claims 1-11 are rejected. Claims 1-11 are appealed.

IV. STATUS OF AMENDMENTS

A Final Office Action finally rejecting claims 1-11 was mailed on October 8, 2008. No Request for Reconsideration or other submission was filed in response to the final rejection. A Notice of Appeal was filed on December 3, 2008.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 defines an optical marking device having at least one light source (20, 22, 24; 32, 34, 36) (page 6, lines 4-9; Fig. 1) and having means for generating a first optical projection line (26) on a reference face (10), as well as means for generating a second optical projection line (30) on the same reference face (10), and the second optical projection line (30) forms an angle of 90° with the first projection line (26) (page 6, lines 11-28; Fig. 1). Means (20, 22,

24; 32, 34, 36) are present which generate a third projection line (28), and the third projection line assumes an angle of 45° to the first optical projection line (26) and an angle of 45° to the second optical projection line (30) (page 7, lines 24-29; Fig. 1).

Claim 8 defines a tool device having a device as provided in claim 1 (page 6, lines 11-28; Figs. 1 and 2).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 1-11 are anticipated under 35 U.S.C. 102(e) by U.S. Patent Pub. No. 2007/0175054 to Murray ("Murray").

VII. ARGUMENT

1. The subject matter of claims 1-11 is not anticipated by Murray.

Claim 1 defines an optical marking device with at least one light source as well as means for producing a first optical projection line, means for producing a second optical projection line, and means for producing a third optical projection line. The first and second projection lines form an angle of 90° The third projection line forms an angle of 45° with the first projection line AND with the second projection line, and therefore bisects the first and second projection lines.

The optical marking device of the present invention makes it possible to display simultaneously three optical projection lines on a reference surface, whereby these three projection lines are arranged in the above-described

manner. Again, all three projection lines are provided simultaneously on a background. Otherwise, two lines could not form an angle of 45° relative to one another.

The projection of three projection lines with the device of Murray is NOT possible. As shown in Fig. 2, for example, as well as the associated description of Murray, the device has a pivotable projection unit, which makes it possible to display a single projection line at different angles on a reference surface. In Murray's Fig. 2, possible alternative orientations of the projection head are shown.

Murray fails to teach the projection of three laser lines, which form an angle of 45°, respectively, to one another. A simultaneous projection of three lines is neither possible nor obvious.

Indeed, in paragraph [0059], Murray teaches that the device can also have multiple light sources in order to display two or more lines on a reference surface. However, the claimed subject matter of the present invention, that is, three lines in one plane, which are offset to one another at 45°, respectively, is neither disclosed nor suggested by Murray. As the only example of a simultaneous crossline system, paragraph [0059] of Murray, together with Fig. 19, disclose and show a two-line system, in which both lines form a right-angled cross.

Again, Murray fails to disclose the simultaneous production of three projection lines that are arranged as specifically recited in claim 1. Therefore, the rejection of claim 1 under Section 102 cannot stand. Murray cannot be an appropriate reference either under, **MPEP section 2131**, which indicates that to

anticipate a claim a reference must teach every element of the claim in as complete detail as is contained in the Applicant's claim, or under **MPEP section 2143.03**, since not all of Applicant's claim limitations are taught or suggested.

In view of the foregoing discussion, it is respectfully requested that the Honorable Board of Patent Appeals and Interferences overrule the final rejection of claims 1-11 over the cited art, and hold that Appellants' claims be allowable over such art.

Respectfully Submitted,

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VIII. CLAIMS APPENDIX

Copy of Claims Involved in the Appeal:

1. An optical marking device having at least one light source (20, 22, 24; 32, 34, 36), and having means for generating a first optical projection line (26) on a reference face (10), as well as means for generating a second optical projection line (30) on the same reference face (10), and the second optical projection line (30) forms an angle of 90° with the first projection line (26), characterized in that means (20, 22, 24; 32, 34, 36) are present which generate a third projection line (28), and the third projection line assumes an angle of 45° to the first optical projection line (26) and an angle of 45° to the second optical projection line (30).

2. The device as defined by claim 1, characterized in that the first, second, and third projection lines (26, 28, 30) define a plane (10).

3. The device as defined by claim 1, characterized in that the third projection line (28) is an optical projection line.

4. The device as defined by claim 2 and 3, characterized in that at least one projection line (26, 28, 30) is fanned out perpendicular to the reference plane.

5. The device as defined by claim 3, characterized in that the three optical projection lines (26, 28, 30) are generated by at least one light source (20, 22, 24; 32, 34, 36), and in particular by at least one linear laser (22).

6. The device as defined by claim 3, characterized in that the three optical projection lines (26, 28, 30) are generatable by means of a single light source (20, 22, 24), and in particular by means of a single laser signal (22).

7. The device as defined by claim 6, characterized in that the optical projection lines (26, 28, 30) are generatable by means of at least one optical element from the single light source (20, 22, 24).

8. A tool device (16) having a device as defined by one of claims 1 through 7.

9. The tool device as defined by claim 8, characterized in that the device is suspended in the manner of a pendulum laser in a housing (17) of the tool device (16).

10. The tool device as defined by claim 8, characterized in that the device is calibratable relative to the housing (17) of the tool device (16).

11. The tool device as defined by claim 9 or 10, characterized in that the emission from the optical projection lines (26, 28, 30) is switchable out of the housing (15) of the tool device (16), and in particular is individually switchable.

IX. EVIDENCE APPENDIX.

None.

X. RELATED PROCEEDINGS APPENDIX.

None.